

This letter discusses the taxability of sales to Illinois customers made through the Internet. 86 Ill. Adm. Code 150.201. (This is a GIL).

February 22, 2002

Dear Xxxxx:

This is in response to your letter dated November 25, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

I am writing in concern about the state sales tax in Illinois. With the increase of internet commerce, more and more revenue is going uncollected. There should be a sales tax on all electronically purchased goods to establish a well-balanced sales tax rate. It would greatly increase the revenue of Illinois. By the year 2003 it is expected that state governments will be losing 15 billion dollars annually if internet purchases remain tax-free.

Our tax laws need to be updated as technology advances. If free sales tax is not eliminated, low-income consumers without the ability to shop online or by mail, will end up paying an uneven share of state and local taxes. Maybe if internet commerce is taxed, it could lower our average state sales tax instead of being one of the highest rates in the mid-west.

Businesses are also being affected by this tax-free commerce. It is said that internet companies owe as much as 30 percent of their sales to not having to have a sales tax. Regular retailers are at risk of losing major business as long as they have to add a six and quarter tax when things are purchased. Companies are not only in competition with each other but with the sales tax itself.

Thank you for your comments regarding taxation of Internet sales. You are not alone in your concern about the threat to sales tax revenues caused by the expansion of Internet commerce in recent years. Many Illinois businesses and individual taxpayers have commented on and requested advice about the taxability of Internet sales.

You should know that the sale of tangible personal property via the Internet and through catalogs is not a tax-free sale. Although a business not having sufficient presence in this State would not be required to collect sales tax from an Illinois customer on a sale of tangible personal property

and remit such tax to the State, the transaction remains subject to sales tax. The duty to remit the tax to the State, however, falls on the Illinois customer.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property for use or consumption at retail. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3. The Retailers' Occupation Tax and the corresponding Use Tax comprise what is commonly known as "sales tax" in Illinois.

The term "retailer" means and includes every person engaged in the business of selling tangible personal property for use and not for resale in any form. See 86 Ill. Adm. Code 150.201(h), a copy of which is enclosed for your reference. An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in the enclosed copy of Department regulations 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S. Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have a physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary. Please refer to Brown's Furniture, Inc. v. Zehnder, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-state goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25% and is remitted on a form ST-44.

Therefore under the Illinois tax laws, a sale of tangible personal property to an Illinois customer by a retailer not having sufficient presence in Illinois to subject it to Illinois tax collection and remittance requirements, is not a tax-free sale. The sale is subject to Illinois sales tax but the tax liability is self-assessed and remitted to the State by the Illinois customer in such situations. This holds true regardless of the medium through which the sale is made, i.e. Internet, catalog or television advertisement sales.

It may also be helpful for you to know that as a result of the passage of Public Act 92-221, Illinois is currently participating in multistate discussions to modernize and simplify sales and use tax administration. One of the goals of such discussions is to promote voluntary collection and remittance of state sales tax by out-of-state retailers not subject to a state's tax laws.

I hope this information has been helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Dana Deen Kinion  
Associate Counsel

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